

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1-26 are now pending in this application.

In Section 4 of the Office Action, Claims 1-26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,642,171 (Baumgartner et al.) in view of U.S. Patent 6,188,396 (Boezeman et al.). Applicant respectfully traverses the rejection. MPEP § 2143 states:

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

First, there is no suggestion or motivation to combine Baumgartner et al. with Boezeman et al. either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Second, there is not a reasonable expectation of success in combining Baumgartner et al. with Boezeman et al. Third, neither Baumgartner et al. nor Boezeman et al. alone or in combination disclose, teach, or suggest the claimed invention as recited in Claims 1-26.

Motivation to Combine

Examiner states:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include Boezeman's teachings of providing a tempo for an audio to be at least partially included in the recording signal, the tempo to fit the audio recording to a section of the recorded signal marked by the reference into that of Baumgartner's adjusted tempo invention. By doing so, the system would be enhanced by providing an graphically [sic] editor to an end user wherein the user can graphically editing and synchronizing [sic] audio and video as well as animation tool based on user's desired taste.

(Page 4, Office Action dated 4/21/2004)

There is no motivation to combine Baumgartner et al. with Boezeman et al. for at least three reasons. First, Baumgartner et al. is inoperable with Boezeman et al. Second, combining Baumgartner et al. with Boezeman et al. changes the principal of operation of one or the other reference. Third, both Baumgartner et al. and Boezeman et al. are complete and functional without the other.

First, Baumgartner et al. is inoperable with Boezeman et al. Boezeman et al. requires manual human interaction with a sequence editor to synchronize multimedia parts with reference to time. Boezeman et al. describes a multimedia application that an application developer might create “from parts on a scene that have been selected previously.” (Col. 5, lines 40-41). “The **sequence editor is a mechanism that allows a user to synchronize** relative time, absolute time and event time together in an easy to use manner. The solution **assumes that items for synchronization (such as an animation, video, audio, image) have been previously identified and selected by a user.**” (Col. 5, lines 47-52, Emphasis added). Additionally, Boezeman et al. states “the developer has set the zoomer 82 for a two second interval.” (Col. 7, lines 5-6). Again, Boezeman et al. states “[t]he developer has also dragged the animation part 124 from the bullpen 100, and dropped it into thumbnail area 112.” (Col. 7, lines 11-13). Again, Boezeman et al. states “the play tool 88 has been dragged and dropped onto the show block 103.” (Col. 7, lines 16-17). Again, Boezeman et al. states “an audio player part 140 has been dragged from the bullpen 100 and dropped into the thumbnail area 114.” (Col. 7, lines 23-25). Again, Boezeman et al. states “the play tool 88 is dragged and dropped onto the visibility block 105.” (Col. 7, lines 32-33). Again, Boezeman et al. states “a video player part 150 has been dragged from the bullpen 100 and dropped onto the thumbnail area 116.” (Col. 7, lines 41-43). Again, Boezeman et al. states “the developer has selected Image 1 part 160 from the bullpen 100 and dropped it into thumbnail area 118.” (Col. 7, lines 51-53). Reliance on user interaction continues throughout the description of Boezeman et al. Thus, the sequence editor of Boezeman et al. uses previously created and saved multimedia files that a **user** then uses to build a presentation.

Conversely, Baumgartner et al. describes a system “for synchronizing audio and video **data streams in a computer system during a multimedia presentation.**” (Abstract, Emphasis added). Instead of multimedia data files as used in Boezeman et al., Baumgartner et al. synchronizes data streams. Instead of using the application to build a presentation as described in Boezeman et al., Baumgartner et al. describes a system used **during** a multimedia presentation. Instead of relying on a developer to build the presentation as described in Boezeman et al., Baumgartner et al. describes a computer system that “synchronizes the audio and video data streams during a multimedia presentation to ensure that the appropriate sounds are generated by the speaker 132 when the corresponding images are being displayed by the video monitor 122.” (Col. 9, lines 9-13).

As a result, Baumgartner et al. and Boezeman et al. are not operable together. Baumgartner et al. is not operable to allow a user to create a presentation. Boezeman et al. is not operable to process media streams as they are being received. Therefore, there is no motivation to combine Baumgartner et al. with Boezeman et al.

Second, combining Baumgartner et al. with Boezeman et al. changes the principal of operation of one or the other reference. As a result, there is no motivation to combine Baumgartner et al. with Boezeman et al. Baumgartner et al. describes a computer system that performs the operations of synchronizing “the audio and video data streams during a multimedia presentation to ensure that the appropriate sounds are generated by the speaker 132 when the corresponding images are being displayed by the video monitor 122.” (Col. 9, lines 9-13). The method of Baumgartner et al. is provided by a computer system without user interaction. Processing by a user would require that the user synchronize the audio with the video within a few frames of each other. A user could not provide such synchronization. Nor could a user calculate the synchronization error value at a rate sufficient to maintain the synchronization. On the other hand, the sequence editor of Boezeman et al. requires significant user interaction. Boezeman et al. describes a developer creating a presentation from existing multimedia files. (Col. 5, lines 40-41). Thus, in changing the principal of operation of either Baumgartner et al. or Boezeman et al., either reference becomes inoperable for its intended purpose.

Third, there is no motivation to combine Baumgartner et al. with Boezeman et al. because each described invention is complete and functional without the other. Baumgartner et al. describes a computer system for synchronizing “the audio and video data streams during a multimedia presentation to ensure that the appropriate sounds are generated by the speaker 132 when the corresponding images are being displayed by the video monitor 122.” (Col. 9, lines 9-13). Boezeman et al. describes a developer creating a presentation from existing multimedia files. (Col. 5, lines 40-41). Each described invention is complete and functional without the other.

An obviousness rejection cannot properly be maintained where there is no suggestion or motivation to combine the references used in the rejection. As a result, Applicants request withdrawal of the rejection of claims 1-26.

Reasonable Expectation of Success

There is not a reasonable expectation of success in combining Baumgartner et al. with Boezeman et al. As related above, Baumgartner et al. and Boezeman et al. are not operable together. Baumgartner et al. is not operable to allow a user to synchronize the audio and video streams. Boezeman et al. is not operable to process media streams as they are being received. Therefore, there is no reasonable expectation of success in combining Baumgartner et al. with Boezeman et al. An obviousness rejection cannot properly be maintained where there is no reasonable expectation of success in combining the references used in the rejection. As a result, Applicants request withdrawal of the rejection of claims 1-26.

Teach or Suggest All the Claim Limitations

Claims 1-26. Claims 2-9 depend from Claim 1. Claims 11-14 depend from Claim 10. Claims 16-20 depend from Claim 15. Claims 22-26 depend from Claim 21. Claim 1 recites:

providing a tempo for an audio recording to be at least partially included in the recorded signal, the tempo being adjusted to fit the audio recording to a section of the recorded signal marked by the reference.

Claim 10 recites:

means for providing a tempo for an audio recording segment to be included in the recorded signal, the tempo being adjusted to fit the audio recording segment to a section of the recorded signal marked by the reference.

Claim 15 recites:

provide a tempo for an audio recording segment to be included in the recorded signal, the tempo being adjusted to fit the audio recording segment to a section of the recorded signal marked by the reference.

Claim 21 recites:

a reference marker which is configured to be selectively located by a user, the reference marker being used to adjust the tempo of at least a portion of the first audio recording, the tempo adjustment being provided to fit the first audio recording to a section of the second audio or video recording.

With respect to claims 1, 10, 15, and 21, the Examiner states that Baumgartner et al. “does not disclose the limitation of providing a tempo for an audio to be at least partially included in the recording signal, the tempo to fit the audio recording to a section of the recorded signal marked by the reference.” The Examiner points to Boezeman et al. as providing this teaching. Specifically, the Examiner states:

Boezeman discloses the limitation of providing a tempo for an audio to be at least partially included in the recording signal, the tempo being provided to fit the audio recording to a section of the recorded signal marked by the reference as the technique of a Sequence Editor which during the course of the animation, a pieces of audio is also played. At the simulation ending of the animation and audio, a video plays (see col. 6, lines 58-62 and see Fig. 3-17).

(Page 3, Office Action dated 4/21/2004)

Applicants respectfully disagree. There is no suggestion or teaching in Boezeman et al. of performing the operation of “the tempo being adjusted to fit the audio recording to a section of the recorded signal marked by the reference.”

For the second time, the Examiner points to Col. 6, lines 58-62 in Boezeman et al. as providing “tempo being adjusted to fit the audio recording segment to a section of the recorded signal.” Col. 6, lines 58-62 state, in their entirety, “[d]uring the course of the animation, a piece of audio is also played (an oral description of how the assembling process is accomplished, plus some music). At the simultaneous ending of the animation and audio, a video plays (a 360 degree view of the assembled part for perspective purposes and completeness of the student's background).” Applicant fails to understand how this language pertains to the “tempo being adjusted to fit the audio recording segment to a section of the recorded signal.”

Boezeman et al. discloses “that the animation player part and the audio player part will start and stop simultaneously. Since the audio was only about 30 seconds in length, the **audio will obviously have to be replayed** to reach the 100 second length of the animation.” (Col. 7, lines 61-65 and Fig. 10, Emphasis added). Thus, Boezeman et al. teaches away from “the tempo being adjusted to fit the audio recording to a section of the recorded signal marked by the reference.” Instead, Boezeman et al. **replays the recording at the same tempo.** Thus, Boezeman et al. describes repeating the audio 3.3 times to fill the entire 100 second length of the animation. The tempo is not **adjusted to fit the audio recording to a section of the recorded signal** marked by the reference as recited, for example, by Applicant’s claims 1, 10, 15, and 21. Adjusting the audio to fit the audio recording to the animation results in a tempo decrease by a factor of 3.3.

Additionally, Boezeman et al. col. 6, lines 64-65 states “[t]he second half of the **video** is to play at twice the rate of the first half.” Boezeman et al. further discloses “it may be desired to have the second half of the **video** played at twice the normal speed. ... To accomplish this, a developer would select the rate spacer Although it is not part of the present invention, ... a dialog box would appear to **query the developer for the rate** required. The second half of the video would then play at the new rate” (col. 9, lines 56-68, Fig. 15, Emphasis added). First, Boezeman et al. references only the video being played at twice the rate. Second, even with respect to the video, Boezeman et al. fails to teach or to suggest changing or otherwise adjusting the tempo “**to fit the audio recording to a section of the recorded signal** marked by the reference.” The developer is allowed to specify a new rate for the media, however, the rate is not

“adjusted to fit the audio recording to a section of the recorded signal marked by the reference” as required, for example, by Applicant’s claims 1, 10, and 15.

In response to Applicant’s previous arguments, the Examiner states:

Baumgartner discloses the limitation of the tempo being adjusted to fit the audio recording as the technique of the method adjusts the audio tempo to maintain synchronization (see col. 6, lines 60-61) or of the method of maintains synchronization by adjusting the audio tempo.

(Page 18, Office Action dated 4/21/2004)

Adjusting the audio tempo to maintain synchronization is not adjusting the tempo **to fit the audio recording to a section of the recorded signal**. Baumgartner et al. adjusts the tempo to maintain lip synchronization of the video stream of a presentation with the audio stream of the presentation. “The synchronization method compares the video and audio frame positions and computes a synchronization error value, which is essentially the number of frames by which the video frame position is in front of or behind the current audio frame position.” (Col. 6, lines 51-55). Baumgartner et al. does not **fit** the audio recording to a section of the recorded signal.

In response to Applicant’s previous arguments, the Examiner further states:

Boezeman, on the other hand, discloses the limitation of providing a tempo for an audio to be at least partially included in the recording signal, the tempo being provided to fit the audio recording to a section of the recorded signal marked by the reference as the technique of a Sequence Editor which during the course of the animation, a piece of audio is also played. At the simulation ending of the animation and audio, a video plays (see col. 6, lines 58-62 and see Fig. 3-17). Specially the synchronization of the audio and animation via the co-occur tool in an implementation of specifying both the starting and ending time of the audio with respect to the animation

(Page 18, Office Action dated 4/21/2004)

However, nowhere does the Examiner state where either Baumgartner et al. or Boezeman et al. describe adjusting the tempo to fit the audio recording to a section of the recorded signal. Synchronizing audio and video with respect to starting and ending times is not **adjusting the tempo** to fit the audio recording to a section of the recorded signal. Boezeman et al. does not adjust the tempo to fit the audio recording to a section of the recorded signal. Boezeman et al.

repeats the audio at the **same** tempo to fit the audio to the animation using the co-occur tool. (Col. 7, lines 58-65).

Thus, neither Baumgartner et al. nor Boezeman et al. disclose, suggest, or teach “the tempo being **adjusted to fit the audio recording to a section of the recorded signal** marked by the reference.” As a result, Baumgartner et al. and Boezeman et al. fail to disclose, suggest, or teach all of the limitations of Claims 1-26. An obviousness rejection cannot be properly maintained where the references used in the rejection do not disclose all of the recited claim elements. As a result, Applicant respectfully requests withdrawal of the rejection of Claims 1, 10, 15, and 21. Applicant respectfully traverses any arguments posed by Examiner relative to claims 2-9, 11-14, 16-20, and 22-26 as they are allowable for at least the reasons outlined above relative to claims 1, 10, 15, and 21. Therefore, Applicant respectfully requests withdrawal of the rejection of claims 1-26.

For the foregoing reasons, it is submitted that all of the claims that have been examined in this application should be in condition for allowance. No additional search by the Examiner is required because no amendments to the claims were made. Similarly, because the claims were not amended, there are no issues of new matter and no increase in the number of claims.

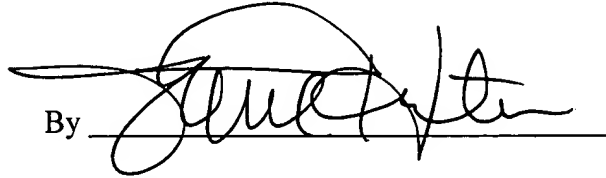
The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-2350. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-2350. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-2350.

Respectfully submitted,

Dated: 15 JUNE 2004

FOLEY & LARDNER LLP
150 East Gilman Street
Madison, Wisconsin 53701-1497
Telephone: (608) 258-4292
Facsimile: (608) 258-4258

By

A handwritten signature in black ink, appearing to read "Paul S. Hunter", written over a horizontal line.

Paul S. Hunter
Attorney for Applicant
Registration No. 44,787